

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 452 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

G M THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR DC RAVAL for Petitioner

None present for Respondents No. 1, 2

MR KM PATEL for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/09/1999

ORAL JUDGEMENT

1. This matter was admitted by this court on 23rd January, 1989 and interim relief has also been granted in favour of the petitioner. Though more than ten years have already been passed but the State of Gujarat and the Collector, Surat have not cared to file reply to the special civil application. That is not the end of the matter but even nobody is present on their behalf to make

oral submissions. Shri S.K. Patel, though present in the court, states that neither the papers of the case have been sent to him nor anybody is present on their behalf with instructions to assist him to make oral submissions in the matter.

2. The facts of the case are that the petitioner was appointed as Clerk under the respondent No.2 on 25th November 1978. This appointment of the petitioner has been made by the competent authority after regular selection in accordance with the statutory recruitment rules. The petitioner passed Post training Pre-Service Examination on 13th July, 1979. While the petitioner was working in the office of the Collector concerned on the Civil Supplies side, his services were ordered to be transfer on deputation to the Gujarat State Civil Supplies Corporation, Gandhinagar under the order dated 27-10-1980. There in Corporation, the petitioner was working as Assistant Depot Manager.

3. Shri K.M. Patel, counsel for the respondent No.3 admits before this court that the designation may be of Assistant Depot Manager but it was a post equivalent to the post of a Clerk in all respects.

4. The Corporation invited options from the Government servants who were on deputation in the Corporation for their absorption in the Corporation services and the petitioner opted for the Corporation services. No final decision has been taken on the option given by the petitioner. In the meanwhile, the services of the petitioner came to be terminated under the order of the respondent No.2 dated 16th January, 1989. His services were terminated on the ground that the post on which he was appointed has been abolished.

5. The petitioner filed an additional affidavit in this matter and the copy of the same was given to the counsel for the respondent No.3 as thereon an endorsement is there but there is no endorsement that the copy of this affidavit has been given to the counsel for the respondents No.1 and 2. However, the learned counsel for the petitioner states in the court that the copy of this affidavit has also been submitted in the Government Pleader's Office. Nobody is present on behalf of the respondents No.1 and 2 to controvert this statement, and as such, it has to be accepted. In this additional affidavit, the petitioner has given out that, in all, the services of 29 persons were terminated out of which the petitioner has approached to this court and he has been protected by this court. The other 28 persons though

have not approached to the court or Tribunal or any other authority, are continued in service and till date they are continued in service by the respondent No.1. Not only this, they have been given seniority, promotions, the benefits of higher pay scale etc..

6. The petitioner is working with the Corporation under the interim order of this court as on the day on which this order has been passed he was in the services of the Corporation. However, from this uncontroverted fact that 28 persons are allowed to continue in the services, it is clear that it is a case where a hostile discrimination has been made in the case of the petitioner. I do not find anything on the record from the side of the respondents No.1 and 2 to show that the petitioner has been appointed purely on ad hoc basis on a temporary post created for preparation of electoral list. These are the questions of facts and unless the respondents produce material on the record of the special civil application whatever the petitioner stated in the special civil application has to be accepted. In the special civil application, as stated earlier, the petitioner stated that his was a regular appointment after selection in accordance with the statutory recruitment rules. Thereafter he has passed the Post Training Pre-Service Examination also. He was sent on deputation after his appointment and his services were terminated in the year 1989. Be that as it may. He had completed about nine years services at the time of termination of his services. The continuation of the petitioner for nine years in service though may be on deputation with the Corporation to which State of Gujarat has sent to him, it is clear that it is a regular appointment on permanent basis after selection in accordance with the recruitment rules. Even if some posts are abolished then the petitioner could have been declared surplus and instead of terminating his services all efforts should have been made to absorb him elsewhere on equivalent post. Moreover, other 28 persons who were declared surplus, their services were not terminated and have been adjusted, I fail to see why the petitioner could not have been adjusted.

7. Taking into consideration the totality of the facts of this case, this petition deserves to be allowed and accordingly it is allowed and the order dated 16th January, 1989 of the Collector, Surat, annexure 'D' on the record of this special civil application is quashed and set aside. As a result of the quashing of this order, the petitioner shall be entitled for all the consequential benefits. Rule is made absolute

accordingly. The respondent No.1 is directed to pay
Rs.2000/- as costs of this petition to the petitioner.

zgs/-